

**Therien, Ned (DOH)**

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**From:** Judy Faaberg [JFaaberg@washelli.com]  
**Sent:** Wednesday, February 15, 2006 2:49 PM  
**To:** Therien, Ned (DOH)  
**Cc:** McPhee, Dennis (DOL); FORKNER@aol.com; nzbenz@yahoo.com; Barr, John  
**Subject:** WAC\_246\_490\_040\_\_2\_[1].doc

Ned - here is what the WCFA's legislative committee came up with, a couple of minor clarifications really. Unless you see some other reason you need to meet with our board, we're satisfied we've come up with a response on behalf of our members that will do nicely therefore don't need to meet with you. thank you!

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Chapter 246-490 WAC  
 VITAL STATISTICS

**WAC 246-490-040** Handling and care of human remains.

(1) Definitions applicable to WAC 246-490-040 and 246-490-050.

(a) "Barrier precaution" means protective attire or equipment or other physical barriers worn to protect or prevent exposure of skin and mucous membranes of the wearer to infected or potentially infected blood, tissue, and body fluids.

(b) "Burial transit permit" means a form, approved and supplied by the state registrar of vital statistics as described in chapter 43.20A RCW, identifying the name of the deceased, date and place of death, general information, disposition and registrar and sexton information.

(c) "Common carrier" means any person transporting property for the general public for compensation as defined in chapter 81.80 RCW.

(d) "Department" means the Washington state department of health.

(e) "Embalmer" means a person licensed as required in chapter 18.39 RCW and engaged in the profession or business of disinfecting, preserving, or preparing dead human bodies for disposal or transportation.

(f) "Funeral director" means a person licensed as required in chapter 18.39 RCW and engaged in the profession or business of conducting funerals and supervising or directing the burials and disposal of human remains.

(g) "Health care facility" means any facility or institution licensed under:

(i) Chapter 18.20 RCW, boarding homes;

(ii) Chapter 18.46 RCW, maternity homes;

(iii) Chapter 18.51 RCW, nursing homes;

(iv) Chapter 70.41 RCW, hospitals; or

(v) Chapter 71.12 RCW, private establishments, or clinics, or other settings where one or more health care providers practice.

(h) "Health care provider" means any person having direct or supervisory responsibility for the delivery of health care or medical care including persons licensed in Washington state under Title 18 RCW to practice medicine, podiatry, chiropractic, optometry, osteopathy, nursing, midwifery, dentistry, physician assistant, and military personnel providing health care within Washington state regardless of licensure.

(i) "Local registrar of vital statistics" means the health officer or administrator who registers certificates of birth and death occurring in his or her designated registration district as defined in chapter 70.58 RCW.

(2) Funeral directors, embalmers, medical examiners, coroners, health care providers, ~~health care facilities, and their employees~~ and others directly handling or touching human remains shall:

(a) Wash hands and other exposed skin surfaces with soap and water or equivalent immediately and thoroughly after contact with human remains, blood, or body fluids;

(b) Use barrier precautions whenever a procedure involves potential contact with blood, body fluids, or tissues of the deceased;

(c) Not eat, drink, or smoke in areas where handling of human remains or body fluids take place;

(d) Use reasonable precautions to prevent spillage of body fluids during transfer and transport of human

remains including, when necessary:

- (i) Containing, wrapping, or pouching with materials appropriate to the condition of the human remains; and
- (ii) Obtaining approval from the coroner or medical examiner prior to pouching any human remains under their jurisdiction.
- (e) Wash hands immediately after gloves are removed;
- (f) Take precautions to prevent injuries by needles, scalpels, instruments, and equipment during use, cleaning, and disposal;
- (g) Properly disinfect or discard protective garments and gloves immediately after use;
- (h) Properly disinfect all surfaces, instruments, and equipment used if in contact with human remains, blood, or body fluids;
- (i) Provide appropriate disposal of body fluids, blood, tissues, and wastes including:
  - (i) Equipping autopsy rooms, morgues, holding rooms, preparation rooms, and other places with impervious containers;
  - (ii) Lining containers with impervious, disposable material;
  - (iii) Equipping disposal containers with tightly fitting closures;
  - (iv) Destroying contents of disposal containers by methods approved by local ordinances and requirements related to disposal of infectious wastes;
  - (v) Immediately disposing of all fluids removed from bodies into a sewage system approved by the local health jurisdiction or by the department; and
  - (vi) Disinfecting immediately after use all containers and cans used to receive solid or fluid material taken from human remains.

(3) Funeral directors, embalmers, and others assisting in preparation of human remains shall refrigerate or embalm the remains ~~within twenty-four hours of~~ upon receipt of the human remains. If remains are refrigerated, they shall remain so until final disposition or transport as permitted under WAC 246-490-050, with the following exceptions:

- (a) ~~clothing~~ dressing, ceremonial washing or anointing of human remains by family or others for cultural or religious purposes, provided barrier precautions are used, and/or,
- (b) a one time family viewing for up to 30 minutes.

(4) Persons responsible for transfer or transport of human remains shall clean and disinfect equipment and the vehicle if body fluids are present and as necessary.

(5) Persons disposing of human remains in Washington state shall comply with requirements under chapter 68.50 RCW.

[Statutory Authority: RCW 43.20.050, 92-02-019 (Order 225B), § 246-490-040, filed 12/23/91, effective 1/23/92; 91-02-051 (Order 124B), recodified as § 246-490-040, filed 12/27/90, effective 1/31/91. Statutory Authority: RCW 43.20.050 (2)(e), 89-02-007 (Order 323), § 248-40-040, filed 12/27/88; 88-13-080 (Order 312), § 248-40-040, filed 6/16/88. Statutory Authority: RCW 43.20.050, 86-14-008 (Order 300), § 248-40-040, filed 6/19/86; Regulation .40.040, effective 3/11/60.]

#### WAC 246-490-050 Transportation of human remains.

(1) Persons handling human remains shall:

- (a) Use effective hygienic measures consistent with handling potentially infectious material;
- (b) Obtain and use a burial-transit permit from the local health officer or local registrar of vital statistics when transporting human remains to the place of final disposition or by common carrier;

~~(c) Enclose the burial transit permit in a sturdy envelope; and~~

~~(d) Attach the permit to the shipping case.~~

(2) Prior to transporting human remains by common carrier, persons responsible for preparing and handling the remains shall:

~~(a) — (a) Enclose the casket or transfer case in a tightly closed, securely constructed outer box;~~

~~(b) Enclose the burial transit permit in a sturdy envelope; and~~

~~(c) Attach the permit to the shipping case.~~

~~(d) Transport human remains pending final disposition more than twenty-four hours after receipt of human remains by the funeral director only if:~~

- (i) The remains are thoroughly embalmed, or
- (ii) The remains are prepared by:

- (A) Packing orifices with a material saturated with a topical preservative;
  - (B) Wrapping the remains in absorbent material approximately one inch thick and saturated with a preservative or coating the remains with heavy viscosity preservative gel;
  - (C) Placing the remains in a lightweight, disposable burial pouch; and
  - (D) Placing the disposable burial pouch inside a heavy canvas rubberized pouch and appropriately sealing along the zippered area with a substance such as collodion.
- (3) Persons responsible for human remains routed to the point of final destination on a burial-transit permit shall:
- (a) Allow temporary holding of remains at a stopover point within the state of Washington for funeral or other purposes without an additional permit; and
  - (b) Surrender the burial-transit permit to the sexton or crematory official at the point of interment or cremation.
- (4) Sextons and cremation officials shall accept the burial-transit permit as authority for interment or cremation anywhere within the state of Washington.
- [Statutory Authority: RCW 43.20.050. 91-02-051 (Order 124B), recodified as § 246-490-050, filed 12/27/90, effective 1/31/91. Statutory Authority: RCW 43.20.050 (2)(e). 89-02-007 (Order 323), § 248-40-050, filed 12/27/88; 88-13-080 (Order 312), § 248-40-050, filed 6/16/88. Statutory Authority: RCW 43.20.050. 86-14-008 (Order 300), § 248-40-050, filed 6/19/86; Regulation .40.050, effective 3/11/60.]



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February 17, 2006

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Dear Ned Therien, R.S.,

I want to thank you for consenting to speak to our Board. Based upon the proposed language, you may get an ear full. I hope you will understand that it is the message and not the messenger that will be generating the discussion.

This letter and my response is my own and I do not speak for our Board of Directors in this response, as they have not yet seen it. I am a licensed funeral director and embalmer in Washington State and have been serving families in Washington for 46 years.

I assumed that those in the DOH understood the reality of death, what happens to the paper work and the human remains, but maybe I had better make sure you and others understand the reality of what we do.

When a death occurs and human remains are removed from the place of death, 99.9% of the time, the cause of death is not shared with the person making the removal. Only on rare occasions is there a signed death certificate waiting at time of transport. The normal process is for the family or hospital to call the funeral home. The funeral home makes the removal. The family comes to the funeral home the following day and gives the beginning information for the death certificate. The death certificate is initiated by the funeral director, sent to the physician to certify the cause of death. The physician has two business days from the initiation of the death certificate to complete the cause of death and return the death certificate to the place of death or to the funeral director. The funeral director completes the death certificate with the remainder of the information supplied by the next of kin and the death certificate is then filed by the funeral director with the Department of Health. This must be completed within three business days from when the death certificate was initiated. If there is a week-end, or perhaps a holiday week-end involved, it may be 5 physical days before the cause of death is on the death certificate and the funeral home is notified.



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The HIPPA regulations and some hospitals' interpretations of them may prohibit the release of the cause of death to the funeral home.

Let me assure you that it is difficult to know what blood borne pathogens are present by looking at human remains. Do you think you can tell by looking at human remains whether the deceased had TB? Meningitis? vCJD? Pandemic Flu Virus? Aids? Bubonic Plague? Kuru? Or any other disease?

The answer is no, you cannot. OSHA and WISHA standards require that all human remains must be treated as if the worst of these conditions are present, because you never do know.

At the meeting in Olympia when the members of the Yakima Tribe were present, I ask the lady who performed the ceremonies over the human remains what type of personal protection equipment she normally adorned. She said she would ask the hospital personnel that release the remains if the body was contagious and if it was she would wear gloves. She also asked the funeral home, when she was making removals from there if there was any information she needed about the cause of death. She said they usually said nothing that we know of. Well, she was right! The funeral home usually does not know the cause of death at the time the Native Americans would make the removal.

The funeral home, however, provides double gloves, gowns, face masks, protective eye wear, head covers, and foot covers for their staff. They would provide this personal protective equipment for anyone at the funeral home, but not if the body is going to the reservation or Tribal Center or elsewhere. That becomes the Tribes responsibility.

I am a simple man. I think in simple ways. In most cases our body watches out for us, if we only listen to its messages. When something tastes bad, don't eat it. When something smells bad, avoid it. Human remains left in 100 + degree temperature for 72 hours will begin to smell, swell, purge bodily fluids from the mouth, nose, rectum, and other places. The skin will separate from the body. The eyes will bulge from their sockets. This is the natural way that human remains decompose. Decomposition begins upon death. It starts with the mucous membranes. The anaerobic bacteria contain within the digestive tract do not die at death. They in fact thrive and continue digesting. You will first notice a green coloration in the lower right quadrant of the abdomen and it will progress from there.

All of our bodies have clostridium welchi bacteria in our digestive tract. It is when these get outside of the digestive tract that they can cause life threatening conditions in the living. Regardless of the cause of death, all human remains will begin decomposing in a heated room and can cause life threatening diseases to the living that are in contact with them, if not wearing proper protective equipment.



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Article 11 of the Washington State Constitution, which you provided, states that the right to practice religious freedom ends when the safety of the community is effected, at least that is what I think the framers of the Constitution had in mind. We have some religions in the world that practice the eating of the deceased. There are some religions that practice the mutilation of the remains in the name of religion. Where do we draw the line? Is having decomposing human remains in an area where the public, family, and friends can touch, handle, kiss, squeeze, sing, pray, and guard and potentially infect everyone present protecting the safety of the community? Is the Department of Health going to assume the financial responsibility for those who become ill and spread disease throughout their community and perhaps the state and the nation? Will you put that in writing in this WAC?

Do you know the purpose of embalming? No, it is not to preserve the body or to restore the body back to a "life-like" appearance. The purpose of embalming is to disinfect the body - to stop decomposition and destroy any blood borne pathogens.

Embalming as we know it today is an American invention. It was started during the Civil War to enable the soldiers to be taken home safely. You see, even then, Americans knew it was not safe to be around decomposing bodies. For nearly 150 years, funeral directors have protected their communities by embalming bodies. The Native Americans' bodies were embalmed and then taken to the tribal centers and all of their religious ceremonies were performed. This has not been a problem for the communities or for the funeral directors until about 8 years ago, when the Yakima Tribe decided to return to the "old ways" and decided they did not want bodies embalmed.

As I stated earlier, you cannot not tell by looking at a both what pathogens might be present. Nationwide the transmission of Mycobacterium tuberculosis is increasing. One of the groups of Americans with the highest instances of TB are the Native Americans. On December 30, 2005 the Center for Disease Control and Prevention (CDC) is these guidelines and are summarized here. This deals with embalming those with or suspected of having TB. Since we do not know the cause of death for several days after we receive the remains, we have to consider everyone is a carrier. OSHA says we must provide a work place free from recognized hazards that are causing or are likely to cause death or serious physical harm. Here is a summary of their findings:

Draft Guidelines for Preventing the Transmission of Tuberculosis in Health-Care Settings, 2005 (69 FR 70457, 12/6/04).

*Final CDC Tuberculosis Guidelines*



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### **Prevention Guidelines for Preventing Tuberculosis Transmission**

The CDC issued final Guidelines for Preventing the Transmission of Mycobacterium tuberculosis in Health-Care Settings, 2005 on December 30, 2005.

.....Persons who handle corpses may be at risk for transmission  
of M. Tuberculosis. ....

The CDC makes specific recommendations to minimize the risk of TB exposure.....

- ☐ The use of local exhaust ventilation should be considered to reduce exposure to infectious aerosol (e.g., when using a saw, including a striker saw) and vapors from embalming fluids.
- Persons embalming a body with confirmed or suspected TB should wear "at least N95 disposable respirators" and, based on the risk assessment, should "consider using a higher level of respiratory protection than an N35 respirator." **NFDA Note:** this would require fit testing and a respiratory protection program in compliance with the Respiratory Protection Standard (29 CFR 1910.134).
- Protection greater than N95 [e.g., a full face piece elasto-metric respirator or powered air purifier respirator (PAPR)] should be considered, especially if aerosol generation is likely.
- After embalming is performed on a body with confirmed or suspected TB, allow adequate time to elapse to ensure removal of TB-contaminated room air before performing another procedure in the same room. If time delay is not feasible, the embalming staff should continue to wear respirators while in the room.
- A written infection control plan for embalming rooms, updated annually.
- Rooms used to embalm bodies with confirmed or suspected TB should comply with the air changes per hour (ACH) required for airborne infection isolation (AII) rooms. According to the CDC, an AII room is a negative pressure isolation room with controls to minimize the transmission of infectious agents by droplet nuclei associated with "coughing or aerosolization of contaminated fluids."
- The use of air cleaning technology, including high efficiency particulate air (HEPA) filtration and ultraviolet germicidal radiation (UVGRL).
- The use of ventilation systems in ambulances and emergency medical service vehicles.

### **OSHA Response to CDC Guidelines**

On January 9, 2006 OSHA announced that it is reviewing the CDC Guidelines to determine whether existing OSHA compliance directives regarding TB should be revised. Following this review OSHA intends to issue a report analyzing the differences between its directives and the CDC Guidelines that will include recommendations on whether existing OSHA regulations should be revised, or new rulemaking should be initiated to specifically address TB hazards in the workplace.



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If this is serious enough stuff for the CDC to worry about in the embalming process, is this not a safety hazard as stated in the Constitution to restrict the spread of TB amongst our Native American families and from them to the surrounding communities? Is this not the responsibility of the DOH?

There has been a great deal in the news over the last few years about "mad cow" disease, especially in Great Britain. We all know these as TSE's. This disease is always fatal. After you have been infected, the disease lies dormant for 25 to 30 years and then your brain becomes mush and you die. The average age at death is 65. There is a new form vCJD where you die within 6 months to 4 years and the average age at death is 28. It comes from eating infected animals. From 1990 until February 3, 2006 there have been 1112 suspected or confirmed deaths from CJD world-wide. Statistically Idaho should have 1.5 cases per year. In 2005 they had 9 cases. There have been several confirmed cases of "wasting disease" in Idaho, Wyoming, Montana, and Washington. Wasting Disease is a form of TSE found in deer and elk. It may be possible that the increase in the number of CJD deaths in the Pacific Northwest may be a vCJD related to consuming deer and elk that are infected with "wasting disease". If this turns out to be the cause of the increased CJD incidents, which group of people in our state consume the greatest amount of deer and elk in their various rituals, feasts, and gatherings, as well as in their homes – the Native American population.

I am currently working with Lara Kidoguchi, MPH, CDC/CSTE Applied Epidemiology Fellow Washington State Department of Health Communicable Disease Epidemiology and with Dr. Mira Leslie, the state public health veterinarian to develop material, continuing education, and brochures for the funeral industry. We must treat all human remains as if our lives depended on them, because they do and the lives of our families, neighbors, and yes, even our Native American friends.

It is time for the Department of Health to put teeth into the WAC's, uphold the intent of the Statutes, and protect the safety of our communities as mandated by our Constitution in Article 11.

Respectfully yours,

James Noel

Washington State Licensed Funeral Director and Embalmer

## Proposed New Chapter 246-500 WAC Handling of Human Remains

**Note:** Red, underlined lettering shows proposed replacement or additions to current rule language in Chapter 246-490 WAC, for ease of comparison.

### 246-500-010 Definitions.

(1) The following definitions apply to this chapter.

(a) "Barrier precaution" means protective attire, equipment, or other physical barriers worn to protect or prevent exposure of skin and mucous membranes of the wearer to infected or potentially infected blood, tissue, and body fluids.

(b) "Burial transit permit" means a form, approved and supplied by the state registrar of vital statistics as described in chapter 70.58 RCW, identifying the name of the deceased, date and place of death, general information, disposition and registrar and sexton information.

(c) "Common carrier" means any person transporting property for the general public for compensation as defined under RCW 81.80.010.

. (This reference deals only with motor freight - Chapter 81.80 RCW Motor freight carriers it does not cover "airlines or air shipment" which is the most common transfer of remains interstate.)

In reading the definitions and exemptions as to what a common carrier is, it could be applied to funeral directors as they work for the general public, they charge a fee for transport of property and they are not specifically listed as exempt.

(d) "Coroner" means the county official described under chapter 36.24 RCW and RCW 36.16.030.

(e) "Department" means the Washington state department of health.

(f) "Embalmer" means a person licensed under chapter 18.39 RCW and defined in RCW 18.39.010.

(g) "Funeral director" means a person licensed under chapter 18.39 RCW and defined in RCW 18.39.010.

(h) "Health care provider" means any person having direct or supervisory responsibility for the delivery of health care or medical care including persons licensed in Washington state under Title 18 RCW to practice medicine, podiatry, chiropractic, optometry, osteopathy, nursing, midwifery, dentistry, physician assistant, and military personnel providing health care within Washington state regardless of licensure.

(i) "Local registrar of vital statistics" means the health officer or administrator who registers certificates of birth and death occurring in his or her designated registration district under chapter 70.58 RCW.

(j) "Medical examiner" means a physician appointed by the county legislative authority to replace the coroner under RCW 36.24.190.

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## **246-500-020**

### **Contact with human remains.**

(1) Funeral directors, embalmers, medical examiners, coroners, health care providers, and others directly handling or touching human remains shall:

: (How is this enforced on the others – there are no "body police"?)

(a) Wash hands and other exposed skin surfaces with soap and water or equivalent immediately and thoroughly after contact with human remains, blood, or body fluids;

(b) Use barrier precautions if a procedure involves potential contact with blood, body fluids, or internal tissues of the deceased;

: (All handling of unembalmed bodies involves potential contact with blood, body fluids, or internal tissues)

(c) Not eat, drink, or smoke in areas where handling of human remains or body fluids takes place;

(d) Use reasonable precautions to prevent spillage of body fluids during transfer and transport of human remains including ~~when necessary~~;

(i) Containing, wrapping, or pouching with materials appropriate to the condition of the human remains; and

(ii) Obtaining approval from the coroner or medical examiner prior to pouching any human remains under their jurisdiction.

(e) Wash hands immediately after gloves are removed;

(f) Take precautions to prevent injuries by needles, scalpels, instruments, and equipment during use, cleaning, and disposal;

(g) Properly disinfect or discard protective garments and gloves immediately after use;

(h) Properly disinfect all surfaces, instruments, and equipment used if in contact with human remains, blood, or body fluids;

(i) Provide appropriate disposal of body fluids, blood, tissues, and wastes including:

(i) Equipping autopsy rooms, morgues, holding rooms, preparation rooms, and other places with impervious containers;

(Who will inspect to make sure all areas of "other places" have impervious containers?)

(ii) Lining containers with impervious, disposable material;

(iii) Equipping disposal containers with tightly fitting closures;

(iv) Destroying contents of disposal containers by methods approved by local ordinances and requirements related to disposal of infectious wastes;

(Do most non-health care workers or non-funeral home employees know the rules and have access to the proper containers & bags and have access to medical waste disposal facilities?)

(v) Immediately disposing of all fluids removed from bodies into a sewage system approved by the local health jurisdiction or by the department; and

(vi) Disinfecting immediately after use all containers and cans used to receive solid or fluid material taken from human remains.

(Is this something that most non-health care workers or non-funeral home employees have available to them or are aware of?)

(2) Persons responsible for transfer or transport of human remains must clean and disinfect equipment and the vehicle if soiled with body fluids or any other portion of human remains.

if soiled with body fluids or any other portion of human remains. (What is meant by this?) (would it not be better to say "contaminate with" body fluids?)

## **246-500-030**

### **Refrigeration or embalming of human remains.**

(1) Funeral directors, embalmers, and others assisting in the preparation of human remains for final disposition shall refrigerate or embalm the remains upon receiving the remains.

(2) Funeral directors, embalmers, and others assisting in the preparation of human remains for final disposition may delay refrigeration (?) (That is directly in opposition to what the statute says! By refrigerating immediately, the body will be cooled down to 40 degrees and removing the body from refrigeration for 30 minutes regardless of the weather will not allow the body temperature to increase appreciable ) or remove human

remains from refrigeration for the following activities, unless doing so would pose a direct threat to human health:

(Who will determine the threat to human health? It is usually 2 to 3 days before the funeral home staff or others will know the cause or manner of death. Can you tell by looking at human remains whether or not they died of or had active TB? What about vCJD? What about Avian Flu? These are all real and potential causes of death and can be life threatening. All unembalmed bodies pose a potential threat to human health until medical conditions the person was treated for or the cause of death is known. The HIPPA regulations prevent hospitals from providing that information at the time of removal.)

(a) Investigations under the jurisdiction of the coroner or medical examiner according to provisions of RCW 68.50.010;

(b) Embalming;

(c) Transporting;

(Is this reference to transporting for final disposition or just going anywhere, even by common carrier?)

(d) Final disposition in accordance with chapters 68.05 and 68.50 RCW;

(e) Viewing for identification by family members, friends, or other the person(s) authorized to control the remains as defined in RCW 68.50.160 or their authorized representatives of the deceased for a period of time not to exceed one hour;

(f) Washing, anointing, clothing, or otherwise preparing the deceased by family members those with the right to control the remains as stated in RCW 68.50.160 or those designated by the person (s) with the right to control or other authorized representatives of the deceased as part of a religious or cultural practice for a period of time not to exceed 24 hours, provided that anyone directly touching the human remains use barrier precautions as required by WAC 246-500-020;

(Won't this just open it up for any family – who will have to determine whether a request is religious or cultural? Is this not discriminating against Atheist? What about those religions who choose to mutilate the bodies and offer sacrifices of body parts? Perhaps those immigrating from New Guinea will now choose Washington, because they can practice their religion of eating parts and pieces of the human remains. Where this occurs there is a disease call Kuru which is a TSE disease. Where does the line get drawn? What about the protection and safety of all of the residents of Washington. No religion should create a safety hazard for the community as it state in the Article 11 of our constitution.

(g) Viewing, reading to, praying over, singing to, sitting with, guarding, or otherwise accompanying the deceased by family and community members as part of a religious or cultural mourning ritual for a period of time not to exceed 72 hours; or

(This basically says anyone can have any type of service with visitation and viewing with an unembalmed body without barrier precautions, for 72 hours. It doesn't take into consideration any environmental conditions. Who is going to be held liable when it is 100 + degrees in the room and the remains will no longer fit in the casket? When the body fluids are running all over the floor in the viewing area, will the DOH be financially responsible for the replacement of the carpet and hauling the old one to the bio-waste facility? When the odor is so bad in the entire building, is it ok to move the body outside so the blow flies and maggots can do their work to protect the health and safety of the citizens of the State of Washington, since the DOH has decided not to do it!)

(COMPLETELY IMPRACTICAL, UNHEALTHY, AND A VIOLATION OF ARTICLE 11 RELIGIOUS FREEDOM OF THE WASHINGTON STATE CONSTITUTION. One constant that has not changed or been altered by amendment since the inception of our constitution is the statement that know religious practice should jeopardize the "safety" of the state! This is exactly what the framers of our constitution had in mind. Regardless of the cause of death, condition of the human remains, or the ambient temperature of the surroundings, human remains can be used to infect any and all who might come into direct contact with them. Who is there to protect the innocent people attending the service and assuming that everything is ok? Will the Department of Health assume all liability for all of those who might attend the service? Please put that in writing! Also put in writing that the funeral home cannot be sued!)

(h) As otherwise approved by the local health officer.

(We have had instances of health officers approving family and friends carrying an unembalmed body, during the summer, in the back of their van for 5 days, until the smell got so bad they had to do something with the body! Who are the "body police" that will protect the public safety?)

(3) Nothing in this section prevents a funeral director or embalmer from:

(a) Charging fees in the normal course of business for services provided in accordance with this section;

(This is not about charging fees, it is about protecting the health and safety of employees, families, religious celebrants, and the general public!)

(b) Requiring the signing of informed consent forms; or

(Will this include a "hold harmless clause in the WAC?)

(c) Imposing additional restrictions on the handling of human remains for reasons of risk management, aesthetics, or other business practices; if the funeral director or embalmer:

: (Who will determine the risk? You are damned if you do and damned if you don't)  
(Does a body with fluids coming from the mouth and nose and/or skin slip constitute  
"aesthetics")

(I do not know of an establishment that would risk themselves or their employees of  
involvement. Maybe the WAC revision that is being done by DOL should just say 30  
minutes and protect funeral homes and their staffs and let the public be unprotected by  
the DOH WAC! If the person or persons with the right to control under RCW 68.50.160  
decides that the funeral home rules that protect their health and well being are too  
restrictive, then they can remove the remains and let the DOH allow them to suffer the  
consequences)

(i) Informs the representative of the deceased that additional restrictions are ~~not~~  
required (permitted by law)

by law; and

(ii) Makes every reasonable effort to facilitate transfer of the human remains to  
another setting to accommodate the religious or cultural mourning practices of the  
deceased.

(Don't put the responsibility on the funeral home to transport the remains to an unsafe  
environment! )

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**246-500-040**

**Transportation of human remains.**

(1) Persons who transport human remains shall:

(a) Use effective hygienic measures consistent with handling potentially infectious  
material; and

(b) Obtain a burial-transit permit from the local health officer or local registrar of vital  
statistics prior to transporting human remains and possess the permit while transporting  
the remains to the place of final disposition.

(Under this wording, the bodies will have to be left at the place of death for 2-3 days  
before transporting – burial transit permits are obtained after the death certificates are  
completed and filed with the health department, so the body would have to stay at the  
place of death for up to 72 hours or more. That is going to make families very unhappy if  
they have to sleep with mom or dad in the house for that period of time. Even with  
embalming after that period of time, the bodies will not look pleasant and talk about  
health hazards. We may have to add on to nursing care facilities who will have less  
beds, because human remains will be there for all of this extra time)

(2) Prior to transporting human remains by common carrier, persons responsible for  
preparing and handling the remains shall:

: (Under the definition of common carrier & the non-exception of funeral homes – funeral homes will have to do all of the things listed below to even remove bodies from hospitals, homes, or care facilities. Can you imagine what this will do to the cost of funerals in Washington?)

(a) Enclose the casket or transfer case in a tightly closed, securely constructed outer shipping case;

(b) Obtain and enclose the burial-transit permit in a sturdy envelope;

(c) Attach the burial-transit permit to the shipping case; and

(d) Transport human remains pending final disposition only if:

(i) The remains are thoroughly embalmed, or

(ii) The remains are prepared by:

(A) Packing orifices with a material saturated with a topical preservative;

(B) Wrapping the remains in absorbent material approximately one inch thick and saturated with a preservative or coating the remains with heavy viscosity preservative gel;

(C) Placing the remains in a lightweight, disposable burial pouch; and

(D) Placing the disposable burial pouch inside a heavy-weight waterproof pouch, which is then appropriately sealed along the zippered area with a substance such as collodion.

(3) Persons responsible for human remains routed to the point of final destination on a burial-transit permit:

(a) May temporarily hold the remains at a stopover point within the state of Washington for funeral or other purposes without an additional permit; and

(b) Must surrender the burial-transit permit to the sexton or crematory official at the point of interment or cremation.

(4) Sextons and cremation officials shall accept the burial-transit permit as authority for interment or cremation anywhere within the state of Washington.

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**246-500-050**

**Cremated human remains.**

(1) This chapter does not apply to human remains after cremation.

(2) A local registrar, in cooperation with the Washington state cemetery board, may issue a permit for disposition of cremated human remains. The permit for the disposition of cremated human remains may be used in connection with the transportation of cremated human remains by common carrier or other means.

(3) The department of health may issue a permit for the disposition of cremated human remains which have been in the lawful possession of any person, firm, corporation, or association for a period of 90 days or more. This permit requires the disposition of cremated human remains to be consistent with Washington state laws and rules.

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## **246-500-060**

### **Authority of the local health officer.**

To protect public health and respond to emergency situations, the local health officer may:

(This entire WAC supports a failure of the DOH to protect the health and safety of the general public in the name of religion. The Washington State Constitution does not allow religious freedoms that will affect the public health and safety. This catch-all clause has no power, as the DOH will always be afraid to protect the public health because they do not want to infringe upon a religious right!)

(1) Impose additional requirements for the handling, care, transport, or disposition of human remains; or

(2) Suspend any requirements of this chapter.

---

## **Chapter 246-490 WAC**

### **Vital statistics**

## **Proposed deletion of current rule sections to be replaced by Chapter 246-500 WAC.**

### **246-490-040**

#### **Handling and care of human remains.**

~~—(1) Definitions applicable to WAC 246-490-040 and 246-490-050.~~

~~—(a) "Barrier precaution" means protective attire or equipment or other physical barriers worn to protect or prevent exposure of skin and mucous membranes of the wearer to infected or potentially infected blood, tissue, and body fluids.~~

**Therien, Ned (DOH)**

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**From:** James Noel [JamesNoel@wsfda.org]  
**Sent:** Thursday, February 23, 2006 3:18 PM  
**To:** Therien, Ned (DOH)  
**Subject:** RE: Meeting with WA Funeral Directors Association

Ned,

I just wanted to take a minute and thank you for your presentation to our WSFDA Board. You did a very admirable job of presenting the information, listening to the concerns of our board members, addressing many of the areas of concern, and showing a caring and responsive attitude. The comments after the meeting were all positive in sensing that you were listening and hearing their positions. We know that the final decisions are not yours. You are the messenger. I know a lot of the areas we were concerned with may not have been in your areas of expertise, but you asked enough questions and had the knowledge to frame the questions in a way that inspired the confidence of our members.

As you develop your responses to those higher up, if I can be of any assistance, do not hesitate to ask.

There was an additional person that some members of the Board felt you could contact – Bill Martin. Bill is a licensed funeral director and embalmer, but he is more than just that. He is a sought-after speaker within our industry and shares his wisdom throughout the country at conventions, in seminars on embalming difficult cases, and is considered by many as the person to call for answers. He works for The Dodge Company. His number is 425-432-6438 or (cell) 206-953-0269. I'm sure he can quote more specific facts and figures than we had available at our meeting.

Thanks again!  
James Noel  
Executive Director  
Washington State Funeral Directors Association

---

**From:** Therien, Ned (DOH) [mailto:Ned.Therien@DOH.WA.GOV]  
**Sent:** Tuesday, February 21, 2006 2:56 PM  
**To:** JamesNoel@wsfda.org  
**Cc:** Luce, Liz (DOL); Davis, Michelle (DOH); McPhee, Dennis (DOL); McLaughlin, Craig D (DOH); Tebaldi, Jennifer (DOH); Jennings, Teresa (DOH); Freeman, Philip (DOH); Ginatta, Antonio (GOV)  
**Subject:** Meeting with WA Funeral Directors Association

James Noel,

Thank you for your thoughtful comments on the discussion draft revision of the State Board of Health's rules on the handling of human remains. There certainly are some challenges in finalizing the details. My meeting with your Board of Directors tomorrow will allow us to discuss these and provide me an opportunity to learn more about the practical problems of handling human remains.

The intended goal of the rule revision is to allow greater flexibility. My discussions with people of many different interests should help me find a balance between public health needs and religious rights. I am optimistic that the service industry can help solve some of the practical problems. It is not the intention of the rule to require every member of the industry to meet every request.

Below are a few brief comments in reply; however, they are not a complete response to the issues you have raised. I will need to do additional research and get additional input from many sectors.

**Draft WAC 246-500-010(1)(c) and 246-500-040(2)**

"Common carrier" is a term used in the existing rule (WAC 246-490-040). I intend no change in provisions regarding this term in the proposed revision. It is my understanding that the transportation of human remains in the course of business of funeral directors and embalmers would not be considered transportation by common

5/4/2006

carrier. See the following web page for context: <http://dictionary.law.com/default2.asp?selected=246&bold=%7C%7C%7C%7C>

Regarding your comment about air shipment, I will need to do additional research. I agree with you that Chapter 81.80 RCW is about motor carriers. The concept of common carrier is broader than that. Federal requirements are likely paramount.

#### **Draft WAC 246-500-020(1)**

The intention of the draft is to expand the applicability of the provisions in this section to all persons handling human remains to fit with provisions in draft WAC 246-500-030. The State Board of Health has many rules of general applicability that are not "policed" by any regular inspection or licensure program. You are correct, if a rule of the State Board of Health has applicability to persons not under some kind of licensure program, compliance is not assured. In such cases, local health officers enforce the rules in response to complaints. Funeral directors, embalmers, and their employees would be required to comply under their licensing rules, according to WAC 308-48-030. The draft rules would not prohibit funeral directors and embalmers from requiring anyone handling human remains on their premises from complying with the provisions of draft WAC 246-500-020, as a business practice.

Funeral directors and embalmers (and other professionals) are subject to personal protective equipment requirements beyond the scope of this rule, including to prevent transmission of tuberculosis. The Department of Labor and Industries provides for such requirements in Chapter 246-823 WAC. The process of embalming is more invasive than the religious mourning practices provided for in draft WAC 246-500-030.

#### **Draft WAC 246-500-020(2)**

Of course, the wording of the discussion draft is not necessarily final. The phrase "or any other portion of human remains" is intended to cover such things as portions of dried tissue. The intention is to clearly include more than liquid material.

#### **Draft WAC 246-500-030(2) & (3)**

The statute that requires immediate refrigeration of human remains by funeral directors and embalmers (RCW 18.39.215) provides "upon written authorization of the proper state or local authority, the provisions of this subsection may be waived for a specific period of time." The State Board of Health is a proper state authority for setting rules, or allowing waiver of this refrigeration requirement, according to RCW 43.20.050(2)(e). Local health officers are regularly given interpretive and waiver authority in Board rules.

If the statute were interpreted strictly and could not be modified by rule, funeral directors and embalmers would have to pick up deceased persons (take possession) with refrigerated vehicles and embalm in refrigerated rooms.

The concept of delaying refrigeration is the same as allowing removal from refrigeration. I understand that cooling a body immediately will help slow decomposition, but a mass the size of a human body will take days to cool internally when placed at an ambient temperature of 40-48 degrees. [Currently, WAC 308-48-031(2) specifies 48 degrees ambient temperature.] The draft rule would require refrigeration of an un-embalmed body, except during active periods provided for in the rule. The time periods in the draft rule are there to spur discussion from all stakeholders. My goal will be to revise the time periods lower, based on balancing this input.

Concerns about the unsuspecting public and industry liability issues are important considerations. I tried to address these in draft WAC 246-500-030(3). I will appreciate discussing this more with your Board of Directors. However, a "hold harmless" clause for the industry is not something that the State Board of Health would include in a rule.

#### **Draft WAC 246-500-040(1)**

My intention in the draft revision is not to add to current provisions regarding burial transit permits. My intention is merely to clarify language. I appear to need to do some more research about the interpretation of RCW 70.58.230, RCW 70.58.240 and RCW 70.58.250. Thank you for pointing out the potential problem.

#### **Draft WAC 246-500-060**

This section is intended to provide local health officers clear authority to relax the rules or impose more strict requirements after a mass casualty event or during an outbreak of a deadly disease. Potential scenarios may require "warehousing" bodies for extended periods of time or prohibiting any handling of human remains without following strict isolation procedures.

**Additional General Comments**

Public health practices for preventing the spread of human disease are heavily based on the concept of "universal precautions" as you mention in your letter. My Masters degree in Microbiology helps me understand the basics of this, but certainly not all the details. Balancing public health with religious freedom deserves a re-evaluation of the risks for handling un-embalmed human remains. This does not mean that everything is acceptable that is a religious practice.

Blood-borne pathogens of concern are more viable soon after death, rather than latter. Decomposition should actually reduce the viability of pathogens; although, many could survive for long periods after death. Blood-borne pathogens are not likely to increase in a body after death. Intact skin is a pretty good barrier to prevent transmission of blood-borne pathogens. As decomposition proceeds and body fluids leak out, there is potential for pathogens to be released from the body. I appreciate your comments about this.

The discussion I need to have with many interests is what is the degree of risk compared to the right of religious freedom. I ask the Washington Funeral Directors Association to be a big part of this discussion. I also ask that you consider new ways of mitigating the potential hazards resulting from religious practices. Are there containment devices or new technology that could be used by the industry?

Thank you for your review of this issue and agreeing to meet with me.

Ned

\*\*\*\*\*

Ned Therien, R.S.  
Health Policy Analyst  
Washington State Board of Health  
PO Box 47990  
Olympia, WA 98504-7990  
(360) 236-4103  
FAX 236-4088  
ned.therien@doh.wa.gov  
www.sboh.wa.gov  
*Working for the health of Washington and its people.*

---

**From:** James Noel [mailto:JamesNoel@wsfda.org]

**Sent:** Friday, February 17, 2006 6:44 PM

**To:** Therien, Ned (DOH)

**Cc:** Cameron Smock; Craig Corbeill; dmurphy@heritagefunerals.com; dennisniva@hotmail.com; Don Oberg; Don Strate; glm1943@yahoo.com; Gini Dryer-Dow; jthom79005@aol.com; Michael W. Turner; Rick Little; Rick Little

**Subject:** RE: Meeting with WA Funeral Directors Association

Ned,

I wanted you to have time to consider my response to the proposed WAC 246-500 prior to our meeting. My response may be mild compared to members of our Board. I am sending copies of my response and letter to them as well. I look forward to our meeting on Feb. 22.

James Noel

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**From:** Therien, Ned (DOH) [mailto:Ned.Therien@DOH.WA.GOV]

**Sent:** Wednesday, February 15, 2006 11:23 AM

**To:** James Noel

5/4/2006

## Therien, Ned (DOH)

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**From:** Aiken, Sally [SAiken@spokanecounty.org]

**Sent:** Sunday, March 05, 2006 1:47 PM

**To:** Ned.Therien@DOH.WA.GOV

Ned:

As to the 3 day issue: The main problems in keeping a body "out" that long would be odor and production of purge fluid and decomposition vesicles on the skin. AIDS is known to survive in body tissues for a surprisingly long period of time. Aside from that, the body would really only place others at risk for bacterial infection with common decomposition bacteria and fungi. I doubt the actual risk of inquiring an infection would be any higher at 3 days than 1, it would probably be lower. I think the real issue is stink and purge fluids and the difficulties that creates for funeral directors. Most people haven't seen normal postmortem changes before, so funeral directors tend to get blamed somehow when those changes occur and are observed by bystanders.

As to the proposed changes (1) ii Obtaining approval prior to pouching—I can't envision an applicable scenario where this permission would be necessary. (I should mention that we place all bodies in body pouches for transport to our facility.)

On page 3 washing, anointing, etc. Do you really require that barrier precautions are used for this. What do those of the Jewish faith do, they typically prepare their dead? If the body has no injuries, cleaning such a fresh body is probably no more dangerous than bathing an infant or adult.

Also on page 4 I Informs the representative, etc., not too clear what is meant by that.

Finally on page 5 3 I see that 2 years has become 90 days. In my experience 90 days is probably too quick to dispose of remains. I also think that what motivates funeral homes to make arrangements with families in these situations, is the fact that if they don't they know they have to keep them for 2 years. I would suspect that 90 days would be less of a motivator, and probably cause family unhappiness in certain cases. I would probably use 1 year, 6 months if the funeral directors won't accept a full year.

Good luck, Sally Aiken



The Confederated Tribes of the Colville Reservation  
**Office of the Reservation Attorney**

Phone Number 2381 – Fax Number 2387



Via e-mail, followed by  
First-Class U.S. Mail

**RECEIVED**

MAR 31 2006

WA STATE BOARD OF HEALTH

March 27, 2006

Ned Therien, Policy Analyst  
Washington State Board of Health  
P.O. Box 47990  
Olympia, WA 98504-7990

Re: Colville Tribes' comments on proposed new Chapter 246-500 WAC;  
Handling of Human Remains

Dear Mr. Therien:

These comments are submitted on behalf of the Confederated Tribes of the Colville Reservation ("Colville Tribes"), a federally recognized tribe that occupies and governs the Colville Reservation. The Colville Reservation comprises roughly 1.4 million acres in North Central Washington State between the Columbia and Okanogan Rivers. There are over 9000 members of the Colville Tribes; over half our membership lives on or near the Colville Reservation, and many more live elsewhere in the State of Washington.

The Colville Tribes appreciates the Board of Health's commitment to promoting sensitivity to tribal religious and cultural practices associated with the treatment of deceased persons. This is by definition a difficult and sensitive subject. At the outset we would note that although the Colville Tribes is a single federally recognized tribe, it is composed of 12 distinct aboriginal tribes or bands. Some of these aboriginal tribes are indigenous to lands within or contiguous to the Colville Reservation, and others are from a somewhat greater distance (for instance the Chief Joseph Band of Nez Perce, who have aboriginal ties to the Wallowa Valley in northeast Oregon). Post-mortem ceremonial practices and requirements for treatment of the remains of the recently deceased vary from one aboriginal tribe to the next, and frankly we do not yet have complete information available as to the practices of all of our constituent tribes and their families. One common feature of the practices of all our constituent tribes is the profound importance that all of them place upon proper treatment of the deceased, whatever that treatment may consist of. It is difficult, therefore, to provide any one single perspective that would address the requirements of all our constituents, but it is very important to try to be sensitive and flexible in providing rules that govern treatment of human remains in the context of legitimate public health and liability concerns.

One way to achieve necessary flexibility may be to provide that local health officers be authorized and encouraged to enter into agreements with tribal governments regarding

Ned Therien, Policy Analyst  
Washington State Board of Health  
March 27, 2006  
Re: Proposed Chapter 246-500 WAC  
Page 2

development of culturally appropriate treatment of human remains. Such agreements could provide case-by-case tailoring and also facilitate cultural awareness training for funeral home directors, embalmers and other professionals, as well as education in legitimate public health concerns for tribal people, including those regarded in the tribal community as having expertise in traditional ceremonial practices. Perhaps the following sentence, or something like it, could be added to proposed section 246-500-060:

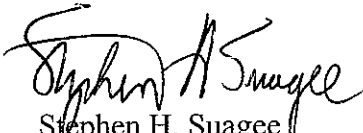
Local health officers are authorized and encouraged to enter into agreements with tribal governments to provide procedures for handling human remains of tribal members that are consistent with both local tribal traditions and legitimate needs to protect public health.

As a further comment, we note that your February 28, 2006, cover letter states that the funeral home industry generally supports most of the proposal but due to health and liability concerns is "not willing to allow un-embalmed human remains to remain in one of their facilities for more than 24 hours without refrigeration." That concern would appear to conflict with, or in practice constrain, certain provisions of proposed 246-500-030. For instance, 030(2)(f) would permit delays in refrigeration or removal from refrigeration for up to 24 hours to accommodate ceremonial activities that could involve the direct touching of remains, and 030(2)(g) would permit delays in refrigeration or removal from refrigeration for up to 72 hours to accommodate other activities that would not seem to involve direct touching. Both of these accommodations are authorized "unless doing so would pose a direct threat to human health." It would thus appear that the health and liability concerns of the funeral home industry referenced in your February 28 letter could effectively limit the 72 hour period to 24 hours and perhaps also restrict removal from refrigeration. It is not clear to us how frequently, if at all, the ceremonial needs of tribal members may extend beyond an initial 24 period and therefore conflict with the concerns of funeral homes. But such a conflict is at least potentially possible. It also often happens that tribal families are primarily concerned with taking custody from a funeral home as soon as possible and assuming responsibility for all ceremonial activities and disposition of the deceased; in such cases a funeral home may not have custody of remains for a long enough time for conflicts to arise. But again the potential for conflicts remains. While the Colville Tribes appreciates the potential public health basis of funeral home concerns, we also believe it may be possible to reconcile these concerns with legitimate cultural and ceremonial needs on more of a case-by-case basis – which is precisely why we propose the concept of agreements between tribal governments and local health officials. The development of such agreements would have to proceed with the understanding that some tribal people may be reluctant, at least initially, to disclose information about post-mortem practices in a prospective or abstract sense, until confronted with the difficulties of an actual situation.

Ned Therien, Policy Analyst  
Washington State Board of Health  
March 27, 2006  
Re: Proposed Chapter 246-500 WAC  
Page 3

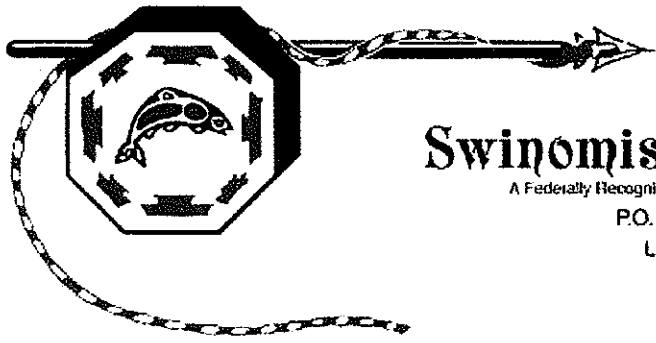
Thank you for initiating the effort to be more accommodating of tribal ceremonial practices relative to the recently deceased. We look forward to a continuing dialogue to address these important matters in an appropriate and pragmatic fashion.

Sincerely,



Stephen H. Suagee  
Reservation Attorney

cc: Colville Business Council  
Cultural Resources Administrator  
THPO



Phone (360) 466-3163  
Fax (360) 466-5309

## Swinomish Tribal Community

A Federally Recognized Indian Tribe Organized Pursuant to 25 U.S.C. § 476

P.O. Box 817 • 11404 Moorage Way  
LaConner, Washington 98257

April 4, 2006

Ned Therien  
Policy Analyst  
Washington State Board of Health  
P.O. Box 47990  
Olympia, WA 98504-7990

Dear Mr. Therien:

I am writing in response to your request for tribal comments on the Discussion Draft of the Human Remains Regulation. The Swinomish Tribe is pleased that the Board of Health is making an effort to account for Native American religious and burial practices and believes that this Discussion Draft is a step in the right direction. We look forward to the opportunity to participate further in the drafting process.

Sincerely,

*Ray Williams by AET per auto*

Ray Williams  
Chair

Gw d'adad Committee

cc: Ann E. Tweedy

**RECEIVED**

APR 06 2006

WA STATE BOARD OF HEALTH

**Therien, Ned (DOH)**

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**From:** Ron Messenger [rmessenger@mountainviewtacoma.com]  
**Sent:** Friday, April 21, 2006 11:05 AM  
**To:** Therien, Ned (DOH)  
**Subject:** RE: Revised Discussion Draft - Human Remains Handling Rule

Ned,

I may be misinterpreting 246-500-040 (b) but my questions surrounding the "temporary notice of removal" are:

1. Is this anytime a body is transported? Meaning if we remove a body from a local nursing home do we first have to obtain a "temporary notice of removal" prior to going to the nursing home? I cannot see this as the case but am not clear on the requirement.
2. Is this for crossing county lines with the removal of a body? Being in Pierce County we are constantly passing into King, Kitsap & Thurston Counties for removals and this would be an extraordinary hardship to fulfill each time and would create substantial delays in responding to home deaths. What would the procedures be on evenings and weekends without the availability of a registrar?
3. Is this crossing State lines with the removal of a body?

Thank you for any clarifications you can provide to me,

Ron Messenger  
Mountain View Funeral Home  
Mountain View Memorial Park

---

**From:** Therien, Ned (DOH) [mailto:Ned.Therien@DOH.WA.GOV]  
**Sent:** Thursday, April 20, 2006 3:24 PM  
**To:** Judy Faaberg  
**Subject:** FW: Revised Discussion Draft - Human Remains Handling Rule

Interested Parties:

Attached is the latest draft of a proposed revision to the State Board of Health's rules on the handling of human remains. This draft has changes from a draft first circulated in February 2006, based on various comments I have received to date.

I am seeking additional comments and do not expect this draft to be the final version that will be submitted to the Board of Health for consideration. Please feel free to circulate this draft. I request additional comments be provided to me by May 10, 2006.

Thank you for your comments provided so far.

<<New Chapter 246-500\_handling human remains\_discussion draft 04 20 06.doc>>

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Ned Therien, R.S.  
Health Policy Analyst  
Washington State Board of Health  
PO Box 47990

5/4/2006

**April 24, 2006**

**Ned Therien, R.S.  
Health Policy Analyst  
Washington State Board of Health  
PO Box 47990  
Olympia, WA 98504-7990**

**Re: Proposed WAC Changes to Handling of Human Remains**

**Dear Mr. Therien:**

**As a Licensed Funeral Director-Embalmer since 1964 and co-owner of Lemley Funeral Chapel in Sedro-Woolley. I would like to comment on your proposed changes.**

**In general, the definitions as proposed under 246-500-010 and 246-500-020 are fine and if anything; defines procedures so that there is no confusion as to what needs to be done. The proposed changes in 246-500-030 are another matter and as written propose health risks to myself, my employees, and more importantly the general public.**

**The condition of human remains differ in each death and without embalming or refrigeration to slow decomposition, the exposure to the public creates a health risk. To allow continual removing of a remains from refrigeration for viewing and an extended period of time as stated in your proposed 72 hour rule is not realistic. The proposed rules will lead to lot of confusion due to interpretation by the public, Department of Health, and funeral personnel.**

**For years, we worked under the 24 hour rule that a one time viewing would be allowed for unembalmed remains up to 24 hours after death. As a best compromise for all concerned, this would be my suggestion. To allow an unembalmed human remains to be exposed to the public for 72 hours is not acceptable. Also, the extra monetary costs that families would incur that would have to be charged by funeral homes to provide facilities and equipment for a 72 hour viewing is unjustified. Under 246-500-030, Sections C,D,and E are in conflict with each other. Section C allows identity viewing but for how long after death. Section D specifies the 24 hours, but requires barrier precautions; who is going to provide that. Section E allowing viewing for 72 hours as stated above is not realistic. By allowing**



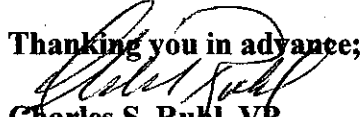
Funeral Directors  
1008 Third Street - Sedro-Woolley, WA 98284

**embalming, the health issue is solved and viewing can be facilitated in many ways as desired by the public for those requiring viewing for more than 24 hours.**

**Concerning 246-500-040, Transportation of Human Remains. It is present practice for all remains that are to be shipped by common carrier to be embalmed. Under your suggestions; if remains are not to be embalmed, the procedures that are indicated would increase costs to families as well as not solving the health issue exposure. More importantly, would all common carriers (airlines and railway) accept non embalmed remains?**

**In all do respect, the conditions that are being proposed to the funeral profession are not realistic. We do not see other states being subjected to these types of rules. Not to be graphic, you and the general public do not realize what happens to human remains after death. It is not a simple matter that can be solved by rules and regulations that create a situation where we as funeral directors cannot do our job in a professional and an effective, manner to protect ourselves and the public. I would hope that there can be some intelligent compromise for all parties concerned.**

**Thanking you in advance;**

  
**Charles S. Ruhl, VP  
Lemley Chapel Inc**

**Therien, Ned (DOH)**

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**From:** Coleman Mortuary [colemanmortuary@comcast.net]

**Sent:** Tuesday, April 25, 2006 1:27 PM

**To:** Therien, Ned (DOH)

**Subject:** Selective practice of refrigeration of human remains.

I have read with great concern, the proposed changes in the law regarding refrigeration. Of most concern is the clause allowing for removal of human remains from refrigeration for up to 72 hours.

Ask yourself or your spouse. Would you allow an unembalmed human remains to be placed in your living room for three days. Do you have any clue as to how this will affect any funeral establishment required to do so.

Give this careful thought. If it wouldn't work for you, it certainly will not work for those you impose your ruling.

Roger E. Smith  
Coleman Mortuary  
Hoquiam, Washington

5/1/2006

**Therien, Ned (DOH)**

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**From:** Tom Flintoft.[tom@flintofts.com]  
**Sent:** Tuesday, April 25, 2006 3:53 PM  
**To:** Therien, Ned (DOH)  
**Subject:** Flintofts Issaquah Funeral Home

Thomas R. Flintoft  
Flintofts Issaquah Funeral Home  
540 E. Sunset Way  
Issaquah, WA 98027  
April 25, 2006

Ned Therien, R.S.  
Health Policy Analyst  
Washington State Board of Health  
PO Box 47990  
Olympia, WA 98504-7990

Dear Mr. Therien:

This letter is in regards to the proposed New Chapter 246-500 WAC.

RE: 246-500-040

(b) Obtain a burial-transit permit or temporary notice of removal from the local health officer or local registrar of vital statistics prior to transporting human remains .....and possess the permit or temporary notice of removal while transporting the remains to the place of final disposition.

The above is unacceptable and unworkable. Since most doctors are closed on weekends and make take several days to sign the death certificate – the deceased would have to stay at home without refrigeration for days before the funeral home could obtain a permit. Also the health department is closed from 4 PM Friday until 8am Monday and holidays. I don't know of one nursing home that has refrigeration. In most nursing home the deceased is left in their room until the funeral home arrived to make the first call.

5/1/2006

RE: 246-500-030

(e) Viewing, reading to, praying over, singing to, sitting with, guarding, or otherwise accompanying the deceased without direct contact with human remains by family and community members for a period of time not to exceed 72 hours; or

The above is unacceptable and unworkable. A human remains starts to decompose soon after death. With OSHA and WISHA requirements for a safe working environment – this is impossible. The entire funeral home would smell, the body fluids would be leaking into the casket and carpet (unless your wrapped the body in plastic), the body would look very poor, and the family would be very upset. This section does not specify when the 72 hours starts. Does it start from the time of death or time received by the funeral home ? The deceased could have been dead for 10 days before the funeral home received the deceased. We would have to tell the family to call another funeral home. It is obvious to me that whoever wrote this section has not been around a body that has been dead for 72 hours without refrigeration or embalming.

I am not an attorney, but I have been told that allowing funeral homes to add additional restrictions (which is a very good idea) may not be legal by other state laws.

Thank your for your assistance.

Thomas R. Flintoft, Owner

Flintofts Issaquah Funeral Home

5/1/2006

# Newell-Hoerling's Mortuary, Inc.

200 WEST PINE STREET  
CENTRALIA, WASHINGTON 98531

(360) 736-3317

April 26, 2006

Ned Therien, RS  
Health Policy Analyst  
Washington State Board of Health  
PO Box 47990  
Olympia, WA 98504-7990

RE: WAC 246-500-010

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Dear Mr. Therien,

Having read the latest draft of the proposed changes to the Department of Health WAC's regarding the handling of unembalmed, unrefrigerated human remains, I feel impelled to comment.

We as a society have in place standards and practices regarding the appropriate handling of the deceased, that have evolved through the years, based on common sense and for the common good. These practices and standards are reviewed constantly by our State Board of Funeral Directors and Embalmers with the input of all stakeholders. Rather than changing the law to accomodate a few, we might better spend our time and money educating the public on what the law states and advising the public to keep their deceased at their home to do whatever the need to do to honor that individual...then call the funeral home! 72 hours seems excessive, 24 hours reasonable. The whole point of embalming is to preserve, sanitize and beautify the deceased in order to hold viewing. It's affordable, and it works! A knee jerk reaction to a few is not responsible to the many. I'm not sure why embalming has come under such an attack lately. Perhaps, we haven't done enough to promote its benefits under the current climate of direct disposition.

Funeral homes have always done their utmost to help families achieve the honor, dignity and cultural /religious needs upon request. Embalming the deceased prior to removal to the home or chosen facility for viewing is reasonable, serving all persons. Why take needless health risks? Whether Prions (CJ) bacteria and anaerobic bacteria, and viruses are a health hazard has been researched for years. Why put families, friends and funeral personnel to any risk?

I personally feel that 246-500-030 #1 is enough. Adding 20 or more lines of exceptions to the rule is confusing and endangers the proud, honorable profession of Embalmers. I'm proud to be an embalmer, using my education to protect public safety and ensure my families, religious or otherwise, the means to view the deceased in the best possible light. I urge you to consider and reconsider the proposed changes carefully.

Respectfully submitted,

*Kathy A. Mathews*

Kathy A. Mathews, Licensed Funeral Director and Embalmer

**Therien, Ned (DOH)**

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**From:** Solie.FuneralHome [solie.funeralhome@verizon.net]  
**Sent:** Thursday, April 27, 2006 9:33 AM  
**To:** Therien, Ned (DOH)  
**Subject:** Response to new draft of "Handling of human remains"

All of the Funeral Directors, Interns and Embalmers at Solie Funeral Home feel that 72 hours is too much time and very inappropriate.

We received your draft on Monday April 24, 2006 and was receptive to all your changes especially allowing viewing (ID) RE: 246-500-030 (2)(C). However, we have never had the opportunity nor would we want to have an unembalmed viewing lasting 3 days. RE: 246-500-030 (2)(e), especially within the confines of a funeral home. I understand that some cultures may want to "view, read to, pray over, sing to, sit with, guard, or otherwise accompany the deceased" while the body begins to decompose. That may be appropriate outside, but not within a funeral home.

Thank you for the opportunity to respond.

Kindest Regards  
The Staff of Solie Funeral Home

5/1/2006

**Therien, Ned (DOH)**

---

**From:** Dennis Christie [djcxie@yahoo.com]  
**Sent:** Thursday, April 27, 2006 11:01 AM  
**To:** Therien, Ned (DOH)  
**Subject:** Response to proposed health code

Mr. Therien,

My name is Dennis Christie and I am the General Manager of Powers Funeral homes. In review of the proposed laws I wanted to voice my opinion. I liked the law that allows us to remove a deceased from refrigeration for up to two hours for family only. The law that allows unembalmed bodies to remain out for friends and community members for up to 72 hrs is a concern to me. How do you let everyone who comes to a service know that they can't touch the deceased and that they face a possible health risk. If it was family only you could have them sign something, but, with a group it wouldn't be feasible. A time of 72 hours would be far to long for a deceased to stay unrefrigerated. You would stand the risk of possible serious decomposition to occur also a person may begin to smell very strongly in that time frame.

Thank you for trying to make the laws better for funeral homes and the families we serve. You all do a great job.

If you care to contact me feel free to do so.

Cell 253-261-6512  
WK 253-845-0536

Sincerely,  
Dennis J. Christie  
General Manager

---

Yahoo! Messenger with Voice. PC-to-Phone calls for ridiculously low rates.

5/1/2006

## **Therien, Ned (DOH)**

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**From:** FCP [fcp@firstcallplus.com]  
**Sent:** Tuesday, May 02, 2006 7:56 AM  
**To:** Therien, Ned (DOH)  
**Subject:** Comment: Proposed New Chapter 246.500 WAC, Handling of Human Remains

Mr. Therien,

I recently had the opportunity to review the proposed new chapter and wanted to forward a some comments.

RE: 246-500-030

Section 2. Funeral Director, embalmers / delay refrigeration unless;

The language allows us to delay refrigeration unless we obtain a statement from the local health officer, Medical examiner or other physician who has examined the deceased that indicates that doing so would pose a health threat. I feel that Funeral Directors need some additional direction on this.

Consider. If we bring the remains into our care, with a known bio-hazard such as TB, MRSA or Hepatitis. Obviously we would not want to allow anyone other than licensed staff, to handle or be exposed to these cases.

Would we need to call the Health District and ask to be told we can not allow a viewing etc? Then there is the issue of "who has examined the body". This could put us in a difficult position when dealing with families.

Further, I doubt that we would be able to have a local health officer or Medical Examiner/Coroner come to our facility to examine the body.

Also, there is no indication or direction concerning when the body was examined. Seldom, does a physician examine a body after death.

Another situation that may develop would be that in the event a family wanted the remains to be transported to a location such as private residence or church for viewing and the remains are a health hazard. Absent embalming and sanitizing the body, this would be a direct health hazard.

A Funeral Director should have the authority to make the declaration of the hazard as well as the others.

Another question. Is psychological trauma considered a threat to human health? Consider a badly decomposed, burned or mutilated body. Think of a crushed child being viewed by a parent.

One suggestion would be to include Funeral Director and Embalmer in the listing of persons who may deem a body a health hazard.

Section 2 (C). Viewing for Identification:

It appears, from my interpretation of the language that only ONE family member would be allowed to view the decedent. This would be very difficult to manage. As an example, a father and mother want to visually identify their child. We would not be able to allow both to do so if the language was strictly followed. I also believe that two hours changes the status from Viewing for identification to a visitation. I am not sure if that is the intent of the language.

Something you might consider would be to remove the work "Viewing" from the text. Possibly title the Section: Confirmation of Identification: I would also like to believe that 10 to 15 minutes would be appropriate. There should also be a limitation restricting

the confirmation to one time only.

Consider 6 individual family members each wanting to confirm identification over the course of two or three days. This is unrealistic.

Another consideration is the condition of the remains. Consider burned, decomposed or severely traumatized bodies. I really don't know how to best address this other than from a public health standpoint. Is it appropriate to allow a family member to see a partially incinerated body. Consider the legal consequences if a family sues due to emotional trauma.

Another very important issue that I feel should be addressed is the definition of "Family Member". I would really like to see a clear definition of Family Member. Consider aunt's, uncles, cousins, guardian of minor children, executors and administrators of wills. I don't feel these people should be considered "family members" however, they may be the only survivors.

Section 2 (d). Washing, anointing,..... First, I would suggest adding "cultural" beliefs as well.

Re: 246-500-040 Transportation of human remains

Section (1) (b) This section poses completely impractical restrictions. Strictly following the language: If a person died at home on Friday night. That body could not be transported until Monday, after a obtaining a permit from the local registrar. Basically, no transport of any human remains could be done until we had a permit in hand.

The language would even prevent moving a body from the Funeral Home to a Crematory.

I would suggest that this section be deleted and we continue to operate with the existing regulations.

Section (2) (a & b). Packing orifices and coating remains with preservatives and preservative gels = violates several religious and cultural beliefs. This will be strongly objected to, in particular, by the Jewish community. Also, human remains that are to be used for research and medical education, that are to be shipped by common carrier can not be treated with preservative gel as it would render them unsuitable.

I would suggest that the regulation include the use of dry ice or frozen gel packs.

Section (2) (a). The vast majority of human remains are shipped in an ATA approved combo cases built especially for transportation of human remains. It is not necessary to place remains in either a casket or transfer case except on rare occasions.

I would ask that you consider eliminating the requirement that remains are either casketed or placed in transfer cases. This only adds to the costs sustained by the family and is unwarranted and unnecessary. No other State requires this.

Section (D) is also unwarranted by requiring a heavy weight waterproof pouch. Usually, just wrapping embalmed remains is sufficient and has been the industry standard for years. The heavy weight pouch is unnecessary and again an added expense for the family or funeral home.

In closing, I would like to thank you for the opportunity to comment and for consideration of my submission.

By: Jerry N. Webster  
Managing Partner

First Call Plus of Washington, L. L. C.  
6942 South 196th Street  
Kent, WA U.S.A. 98032

Ph: 253-893-0321 Fx: 253-893-0323

## MEMORANDUM

TO: Mr. Ned Therien, State Board of Health  
Mr. Matt Tomaskin, Yakama Nation Legislative Liaison

FROM: Dawn P. Vyvyan

DATE: May 2, 2006

RE: Proposed Rule Changes on Human Remains

I am an attorney working with the Yakama Tribal Council and General Council on the proposed rule changes by the Department of Health regarding the handling of human remains. Mr. Matt Tomaskin, Legislative Liaison for the Council, and I have met with Council and discussed the following suggested changes. They are suggestions to the February 2006 Draft. The Council has decided they would like the Rule to reflect their suggestions.

Per our phone conversation of today, Matt and I will be available to go through this language with you on May 3, 2006 at 1:30 before you meet with Tribal Council on May 9, 2006. Matt will be available at 509-865-5121 ext. 4848. I will be available at 206-628-3014. We look forward to discussing this language with you.

- The exemption from embalming or refrigeration because of cultural practices should be for a 74 hour period beginning from receipt of the human remains at the funeral home, not from the time of death. This will allow for the time it takes to transport the body to the location for the service and preparation of the human remain. WAC 246-500-030.

- 246-500-030 Refrigeration or embalming of human remains. The rule states that refrigeration of human remains may be delayed unless doing so would pose a direct threat to human health. There are eight reasons for such delay, one of them being (2)(f), which states:

(2)(f) Washing, anointing, clothing,, or otherwise preparing the deceased by family member or other authorized representatives of the deceased as part of a religious or cultural practice for a period of time not to exceed 24 hours, provided that anyone directly touching the human remains use barrier precautions as required by WAC 246-500-020.

This 24 hour time limit does not allow for there not being a religious practice on Sundays. Our suggested change would be to exclude Sundays as part of the 24 hour requirement.

• The care and handling of body fluids from the human remains are part of the religious practice. WAC 246-500-020 should recognize this. The Rule requires that persons handling or touching the remains should provide for appropriate disposal of body fluids, blood, tissues, and wastes. In some cases where the body has been in an accident or burned, or in bad shape, these fluids are lost. When that is not the case, the religious practice is to keep all things intact with the body. This should somehow be recognized in the rule.

• Unborn fetuses, how are they handled under current state law?

• Permits for transportation can be obtained from a "local health officer". Can this be an assigned person at an Indian Health Center.

May 9, 2006

To: Ned Therien  
Fr: Rex E. Watt  
Funeral Director  
Kern Funeral Home, Mount Vernon, WA  
Re: Proposed changes to WAC 246

Dear Ned,

I am writing in regard to the proposed changes to WAC 246, specifically 246-500-030 and 246-500-040.

I am going to guess you are being 'bombarded' by funeral directors concerned over 246-500-030 (2e). I am glad the state health department is giving funeral directors latitude to allow unembalmed ID viewing of a decedent (2c). I am also glad the department is giving latitude to families who wish to care for their own dead (2d). I assume funeral directors would be able to prepare a body for unembalmed viewing according to (2e)?

I for one, question the age-old mantra of funeral directors that one must be embalmed to be viewed. There has been a fair amount of discussion in industry trade journals over the past year or so about this topic. It appears that there is no real data on the 'health hazards' of unembalmed viewing. Just because we are required to use Universal Precautions when handling deceased human remains does not mean there is a health hazard. I have always been under the impression that if there were truly a health hazard present...the health officers (or physicians) would know of such situations and advise accordingly.

I do, however, have a question about 246-500-040 (1) (b). Does this apply to funeral directors making removals from institutions or homes? It is not possible to obtain a burial-transit permit or temporary notice of removal prior to removal from an institution or home. We do, of course, obtain burial-transit permits before transporting to cemetery, crematory or other destination. And, we file notice of removals with other counties when we remove from one county to another. But we certainly cannot obtain such documents when we are on a first call removal.

Overall, I appreciate the state health department's willingness to allow family members to care for their deceased, and to allow viewing of unembalmed remains. I do not think this will result in a rush of client requests for unembalmed viewing. We don't get much of that now (because more and more people do not want to view at all) and we usually only get it for 'one last time' viewing requests from the immediate family. Good work.

## Therien, Ned (DOH)

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**From:** Eric Andersen [funeralworker@yahoo.com]  
**Sent:** Wednesday, May 10, 2006 12:20 PM  
**To:** Therien, Ned (DOH)  
**Subject:** proposed changes to health law as it pertains to human remains

Sir:

I was recently forwarded a copy of the proposed changes to health law, and I have some concerns.

I am a licensed funeral director and an intern embalmer in the State of Washington. I have been thus for about 5 years now. If it is not too late to make a few comments, here goes.

In section 2, sub-section D, it says that families must wear barrier protection while identification viewing their loved one. I submit that this will be extremely difficult to enforce, and offensive to many. We the funeral directors will have to take the abuse for such a requirement.

Also, in sub-section E a time frame of 72 hours is suggested. This would allow family to have a funeral with an un-embalmed body as much as 3 days after the death. I suggest that if this is law, then what is the point of embalming at all?

Many funerals already take place in this time frame, so why not just skip embalming and have the funeral with un-embalmed remains?

Lastly, having an un-embalmed body in a casket for that long will create issues with purging and smell that would be much better left alone.

Trying to explain to families the issues of this law would be time consuming and possibly offensive.

I would ask you to reconsider these issues.

Thank you for your time.

Eric A. Andersen  
Funeral Director,  
Weeks' Funeral Homes,  
Buckley, WA

Funeral Director's License #2046

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155 NE 100<sup>th</sup> Street, Suite 307  
Seattle, WA 98125-8014  
Ph: (206)325-0489  
director@peoplesmemorial.org  
www.peoplesmemorial.org

May 9, 2006

Dr. Kim Thorburn  
Washington State Board of Health  
P.O. Box 47990  
Olympia, WA 98504-7990

Dear Dr. Thorburn,

As President of the oldest and largest non-profit funeral consumer organization in the country, I am writing on behalf of our approximately 100,000 Washington state members. We're very pleased the State Board of Health is working to make it possible for families of all beliefs and practices to honor their dead as they see fit. The Board's commitment to this is clear from its December, 2005 letter to funeral practitioners temporarily waiving the requirement to constantly refrigerate a body. However, we believe funeral industry pressure has caused some of the proposed changes to the Washington Administrative Code to be drafted in a way that improperly favors the convenience and profit of funeral homes without a rational public health basis. We are further concerned these provisions would expose families to improper sales pressure, and might unintentionally allow funeral homes to deny families their rights as under the Federal Trade Commission's Funeral Rule.

Families, religious groups and cultural communities have been caring for their dead since time immemorial. The research is clear that a living, breathing body is far more contagious than one that is dead<sup>1</sup>. Refrigeration and embalming are fairly recent phenomena, and routine embalming of the dead is found nowhere in the world outside the U.S. and Canada. Likewise, the ideas that dead bodies *in and of themselves* constitute a health risk, and that embalming eradicates this alleged risk, have no basis in medical science and have been put forward by the American funeral industry without a shred of peer-reviewed evidence<sup>2</sup>. We are concerned that these regulations have been written to the benefit of the funeral industry and not to the benefit of our citizens. In particular we are concerned about:

\* Section 246-500-030: Refrigeration or embalming of human remains.

Nowhere is refrigeration by means of dry ice mentioned, yet this is a safe and effective way to keep a dead body "refrigerated" as an alternative to embalming. In fact, dry ice keeps the body

much colder than conventional refrigeration. Additionally, subsections (c), (d) and (e) should be integrated into one section permitting all families, religious or cultural groups to have a body out of refrigeration for up to 72 hours. There is no rational basis for determining that one group should be allowed 72 hours with the deceased while others get 24, or as little as 2 hours. Who will be the arbiter of whether a particular "cultural" or "religious" practice is legitimate? No funeral director or state authority should be placed in that controversial position, and there is no legitimate health reason to segregate the allowable time in this manner. All Washington families, religious and cultural communities ought to have the same right to spend up to 72 hours with the unembalmed remains of their loved one, unless there is a legitimate health risk as determined by the local health officer.

\* Section 246-500-030 (3) (b). This section allows funeral directors to "require[e] the signing of informed consent forms." Allowing funeral directors to draw up such forms would invite abuse. We have seen examples of such forms that were positively grotesque. For example, a pamphlet widely used by one large funeral company describes the cremation process in gruesome detail:

*"To reposition the human remains or to remove the cremated remains from cremation chamber, a broad hoe-like instrument or metal broom is used . . . . Occasionally, excess body fluids escape from the cremation chambers during the processing, fluids which otherwise would have evaporated during the cremation process."*

Of course, this same company sees no need to describe to families the invasive process of embalming, and how it punctures the internal organs, because the intent of the cremation pamphlet is not to inform, but to frighten, and thereby induce families to buy a costlier burial arrangement.

In fact, this entire section (3) is too broad and gives too much power to funeral directors to increase their sales at the expense of vulnerable funeral consumers. To permit funeral directors to "impose additional restrictions on the handling of human remains in his or her establishment for reasons of *risk management, aesthetics (!) or other business practices* (emphasis added)" is to give funeral directors a license to usurp the rights of individuals and overcharge for unnecessary services. An enterprising business could justify any sales opportunity as a "business practice" or a form of "risk management" under this alarmingly broad language. For example, what is to stop a funeral home from stating, "All bodies will be fully made up and dressed in our clothes (for a fee) whether there will be a viewing or not, whether your arrangement is a direct cremation or a full funeral, because that is our business practice." While we're sure the drafters didn't intend this consequence, such shenanigans would be permissible under this provision. Most importantly, this provision directly contradicts the Federal Trade Commission's Funeral Rule, which states funeral homes **may not force consumers to buy goods or services they don't want**.

Section 3 is also unnecessary, because the proposed amendments on refrigeration do not obligate the funeral home to offer 72 hours of viewing without embalming, they merely *permit* the funeral home to offer that service if it chooses. There are thousands of families in Washington State who prefer to prepare their dead according to their own customs and traditions, and, as the "baby boomer" generation is aging there will be new traditions and practices emerging. While we

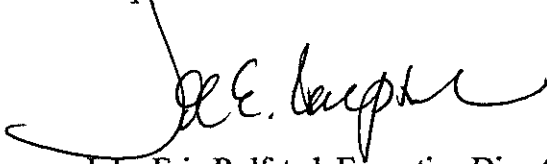
applaud the Board's efforts to accommodate these practices, the current proposals give too much deference to funeral industry desires at the expense of family choice. We also understand the pressure to "please everyone" that the Board must feel, but we were alarmed to learn that a Board of Health employee told Funeral Consumers Alliance Executive Director Joshua Slocum that "the funeral directors told us they would viciously fight our proposals" if the industry's demands weren't met. The profit motives of an organized business have nothing to do with public health, and we urge the Board to continue to promulgate regulations solely for the purpose of protecting public health. We are not asking the Board to force funeral homes to accommodate every particular practice a family might want, we only ask the Board to permit funeral homes to do so within reason. Likewise, we ask the Board not to create a state policy that would allow the funeral industry to impose its own preferences on Washington families.

PMA's Executive Director, John Eric Rolfstad, and I, would like the opportunity to meet you in person to discuss this in more detail. We can be reached at 206-267-2971.

Sincerely,



Ruth E. Bennett, President  
People's Memorial Association



John Eric Rolfstad, Executive Director  
People's Memorial Association



Joshua Slocum, Executive Director  
Funeral Consumer's Alliance

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<sup>1</sup> See "The Infection Hazards of Human Cadavers," Healing, Hoffman and Young. 1995, published in *Communicable Disease Report*, volume 5, number 5, a publication of the British Public Health Laboratory Service. The authors acknowledge that, in a clinical setting, cadavers may pose a risk of infection to those who handle them:

"Infectious conditions and pathogens in the recently deceased that present particular risks include tuberculosis, group A streptococcal infection, gastrointestinal organisms, the agents that cause transmissible spongiform encephalopathies (such as Creutzfeldt-Jakob disease), hepatitis B and C viruses, HIV, and possibly meningitis and septicemia (especially meningococcal)."

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But the authors note that such infections are not common, and that, "The use of appropriate protective clothing and the observance of *Control of Substances Hazardous to Health* regulations, will protect all who handle cadavers against infectious hazards."

Nowhere do the authors recommend refrigeration or embalming as a means of "protecting" the living from the dead. In fact, the authors specifically warn against embalming in the case of virulent disease because to do so creates a **health hazard** to the embalmer while doing nothing to protect the living (see Table 1 for guidelines on handling diseased remains).

In refreshing contrast to the unscientific and irrational attitude many American funeral directors take toward disease and the dead, these researchers state, "living people with diseases are a far greater hazard to health than the dead," and "Universal [body] bagging . . . prevents hygienic preparation of bodies and is undesirable, even when bags that permit the upper part of the body to be displayed are used. It renders final viewing impossible, unpleasant, or at least causes an offensive intrusion into a family's grief. **Very few conditions make viewing by the bereaved an unacceptable hazard (tables 1 and 2) [emphasis added].**"

And, most germane, the authors state this about family participation:

"Some ethnic groups require that relatives and religious leaders carry out their own hygienic preparation and rituals, and this may have to be done on the funeral director's premises. It seems unreasonable to restrict such activities unless an obvious hazard exists. The use of gloves and simple protective clothing by the funeral director's staff and anyone else who handles the bodies should be an acceptable and effective safety measure."

Again, there is no mention of refrigeration or embalming, as these are *aesthetic* considerations irrelevant to disease transmission.

<sup>2</sup> In a literature review article for the Pan-American Health Organization titled "Infectious disease risks from dead bodies following natural disasters," Oliver Morgan notes that myths and emotional reactions — not scientific fact — surrounding corpses often lead to deleterious and counterproductive "public health" policies. Morgan concludes that governments around the world routinely and unnecessarily bury bodies in mass graves or perform mass cremations after natural disasters because of the mistaken belief that dead bodies cause epidemics — whether or not disease-causing organisms are present in the population:

"Although empirical evidence suggests otherwise, strong aversion to the dead may represent a "natural" instinct to protect ourselves against disease. Following large natural disasters, these instinctive uncertainties are compounded by the lack of clear information about how to manage the dead, and these uncertainties result in confusion among humanitarian workers, health organizations, and government authorities. Many individuals and organizations are still unclear about what the infectious risks associated with dead bodies really are, who is most at risk, what precautions should be taken, and how to safely dispose of the bodies."

He also notes that, despite our "natural instinct" to shun dead bodies because of disease fears, "Microorganisms involved in the decay process (putrefaction) are not pathogenic." In plain terms, decomposition may be unpleasant (we don't contest this) but it's not **dangerous**.

Source: Morgan, Oliver. Infectious disease risks from dead bodies following natural disasters. *Rev Panam Salud Publica*. 2004;15(5):307-12.

## **Proposed New Chapter 246-500 WAC Handling of Human Remains**

**Note: Red, underlined lettering shows proposed replacement or additions to current rule language in Chapter 246-490 WAC, for ease of comparison. Blue underlined lettering shows revisions to February discussion draft. Turquoise Underlined shows People's Memorial Association suggested changes.**

### **246-500-010 Definitions.**

(1) The following definitions apply to this chapter.

(a) "Barrier precaution" means protective attire, equipment, or other physical barriers worn to protect or prevent exposure of skin and mucous membranes of the wearer to infected or potentially infected blood, tissue, and body fluids.

(b) "Burial transit permit" means a form, approved and supplied by the state registrar of vital statistics as described in chapter 70.58 RCW, identifying the name of the deceased, date and place of death, general information, disposition and registrar and sexton information.

(c) "Coroner" means the county official described under chapter 36.24 RCW and RCW 36.16.030.

(d) "Department" means the Washington state department of health.

(e) "Embalmer" means a person licensed under chapter 18.39 RCW and defined in RCW 18.39.010.

(f) "Funeral director" means a person licensed under chapter 18.39 RCW and defined in RCW 18.39.010.

(g) "Health care provider" means any person having direct or supervisory responsibility for the delivery of health care or medical care including persons licensed in Washington state under Title 18 RCW to practice medicine, podiatry, chiropractic, optometry, osteopathy, nursing, midwifery, dentistry, physician assistant, and military personnel providing health care within Washington state regardless of licensure.

(h) "Local registrar of vital statistics" means the health officer or administrator who registers certificates of birth and death occurring in his or her designated registration district under chapter 70.58 RCW.

(i) "Medical examiner" means a physician appointed by the county legislative authority to replace the coroner under RCW 36.24.190.

(j) "Refrigeration" may mean use of a mechanical refrigeration unit or the use of dry ice.

**246-500-020**

**Contact with human remains.**

(1) Funeral directors, embalmers, medical examiners, coroners, health care providers, and others directly handling or touching human remains shall: [JOSH'S NOTE — I AM NOT HAPPY WITH THE INSERTION OF THE TERM 'OTHERS.' IF THE INTENT IS TO GOVERN 'OTHERS' WHO PREPARE BODIES IN A CLINICAL OR COMMERCIAL SETTING, THAT'S FINE. HOWEVER, THIS COULD BE CONSTRUED TO APPLY TO INDIVIDUAL FAMILIES AT HOME, AND THE DEPT. HAS NO RIGHT OR POWER TO DICTATE WHETHER INDIVIDUAL FAMILIES EAT, DRINK, SMOKE, OR WASH THEIR HANDS OR HOUSEHOLD SURFACES. THE DEPT. CAN'T DICTATE WHETHER FAMILIES WASH THEIR HANDS AT HOME AFTER COOKING CHICKEN, CHANGING A BABY'S DIAPER, OR GIVING A BATH TO A DYING RELATIVE. LIKEWISE, THEY HAVE NO BUSINESS DICTATING THIS IN THE CONTEXT OF A DEATH AT HOME. BESIDES, JUST WHO WOULD ENFORCE THIS AND HOW? AGAIN, IF THIS IS NOT MEANT TO APPLY TO FAMILIES AT HOME, I WITHDRAW ANY OBJECTIONS.]

(a) Wash hands and other exposed skin surfaces with soap and water or equivalent immediately and thoroughly after contact with human remains, blood, or body fluids;

(b) Use barrier precautions if a procedure involves potential contact with blood, body fluids, or internal tissues of the deceased;

(c) Not eat, drink, or smoke in areas where handling of human remains or body fluids takes place;

(d) Use reasonable precautions to prevent spillage of body fluids during transfer and transport of human remains including, when necessary:

(i) Containing, wrapping, or pouching with materials appropriate to the condition of the human remains; and

(ii) Obtaining approval from the coroner or medical examiner prior to pouching any human remains under their jurisdiction.

(e) Wash hands immediately after gloves are removed;

(f) Take precautions to prevent injuries by needles, scalpels, instruments, and equipment during use, cleaning, and disposal;

(g) Properly disinfect or discard protective garments and gloves immediately after use;

(h) Properly disinfect all surfaces, instruments, and equipment used if in contact with human remains, blood, or body fluids;

- (i) Provide appropriate disposal of body fluids, blood, tissues, and wastes including:
  - (i) Equipping autopsy rooms, morgues, holding rooms, preparation rooms, and other places with impervious containers;
  - (ii) Lining containers with impervious, disposable material;
  - (iii) Equipping disposal containers with tightly fitting closures;
  - (iv) Destroying contents of disposal containers by methods approved by local ordinances and requirements related to disposal of infectious wastes;
  - (v) Immediately disposing of all fluids removed from bodies into a sewage system approved by the local health jurisdiction or by the department; and
  - (vi) Disinfecting immediately after use all containers and cans used to receive solid or fluid material taken from human remains.
- (2) Persons responsible for transfer or transport of human remains must clean and disinfect equipment and the vehicle if soiled with body fluids or any other portion of human remains.
- (3) Nothing in the above section is meant to limit the rights of families to care for their dead. Families are encouraged to use safe and hygienic practices.

#### 246-500-030

#### Refrigeration or embalming of human remains.

- (1) Funeral directors, embalmers, and others assisting in the preparation of human remains for final disposition shall refrigerate or embalm the remains upon receipt.
- (2) Funeral directors, embalmers, and others assisting in the preparation of human remains for final disposition may delay refrigeration or remove human remains from refrigeration for the following activities unless the local health officer, medical examiner, or other physician who has examined the deceased indicates that doing so would pose a direct threat to human health:
  - (a) Embalming;
  - (b) Transporting;
  - (c) Witnessing Cremation
  - ~~(e) Viewing for identification for a period of time not to exceed two hours by a family member or person otherwise best qualified to identify the deceased;~~
  - ~~(d) Washing, anointing, clothing, or otherwise preparing the deceased by family members or other persons acting according to the religious beliefs of the deceased for a period of time not to exceed 24 hours, provided that anyone directly touching the human~~

~~remains uses barrier precautions according to requirements under WAC 246-500-020(b);~~

~~— (e) Viewing, reading to, praying over, singing to, sitting with, guarding, or otherwise accompanying the deceased without direct contact with human remains by family and community members for a period of time not to exceed 72 hours; or~~

(d) To allow families or other persons, acting in accordance with the wishes of the deceased or of family members, to wash, dress, anoint, or otherwise prepare the body, or to sit vigil with the body,

(f) As otherwise approved by the local health officer after evaluating specific circumstances; the need to protect public health; and recognition of personal, religious and cultural traditions or beliefs.

(3) Nothing in this section prevents a funeral director or embalmer from:

(a) Charging fees allowed by law in the normal course of business for services provided in accordance with this section;

(b) Requiring the signing of informed consent forms;

(c) Limiting the handling of human remains in his or her facility to prevent a direct threat to the health of employees or the public; or

~~— (d) Imposing additional restrictions on the handling of human remains in his or her establishment for reasons of risk management, aesthetics, or other business practices; if the funeral director or embalmer;~~

~~— (i) Informs the representative of the deceased that additional restrictions are not required by law; and~~

~~— (ii) Makes every reasonable effort to facilitate transfer of the human remains to another setting to accommodate the religious or cultural mourning practices of the deceased.~~

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## **246-500-040**

### **Transportation of human remains.**

(1) Persons who transport human remains shall:

(a) Use effective hygienic measures consistent with handling potentially infectious material; and

(b) Obtain a burial-transit permit or temporary notice of removal from the local health officer or local registrar of vital statistics prior to transporting human remains and

possess the permit or temporary notice of removal while transporting the remains to the place of final disposition.

(2) Prior to transporting human remains by common carrier, persons responsible for preparing and handling the remains shall:

(a) Enclose the casket or transfer case in a tightly closed, securely constructed outer shipping case;

(b) Obtain and enclose the burial-transit permit in a sturdy envelope;

(c) Attach the burial-transit permit to the shipping case; and

(d) Transport human remains pending final disposition only if:

(i) The remains are thoroughly embalmed, or

(ii) The remains are prepared by:

(A) Packing orifices with a material saturated with a topical preservative;

(B) Wrapping the remains in absorbent material approximately one inch thick and saturated with a preservative or coating the remains with heavy viscosity preservative gel;

(C) Placing the remains in a lightweight, disposable burial pouch; and

(D) Placing the disposable burial pouch inside a heavy-weight waterproof pouch, which is then appropriately sealed along the zippered area with a substance such as collodion. (Collodion?? How long has it been since people used collodion?)

(3) Persons responsible for human remains routed to the point of final destination on a burial-transit permit:

(a) May temporarily hold the remains at a stopover point within the state of Washington for funeral or other purposes without an additional permit; and

(b) Must surrender the burial-transit permit to the sexton or crematory official at the point of interment or cremation.

(4) Sextons and cremation officials shall accept the burial-transit permit as authority for interment in a cemetery or cremation within the state of Washington.

**246-500-050**

**Cremated human remains.**

(1) Other than the provisions in this section, this chapter does not apply to human remains after cremation.

(2) A local registrar, in cooperation with the Washington state cemetery board, may issue a permit for disposition of cremated human remains. The permit for the disposition of cremated human remains may be used in connection with the transportation of cremated human remains by common carrier or other means.

(3) The department of health may issue a permit for the disposition of cremated human remains which have been in the lawful possession of any person, firm, corporation, or association for a period of 90 days or more. This permit requires the disposition of cremated human remains to be consistent with Washington state laws and rules.

## **246-500-060**

### **Authority of the local health officer.**

To protect public health and respond to emergency situations, the local health officer may:

(1) Impose additional requirements for the handling, care, transport, or disposition of human remains; or

(2) Suspend any requirements of this chapter.



## Lewis Funeral Chapel

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5.19.06

Ned Therien, R.S.  
Health Policy Analyst  
Washington State Board of Health  
PO Box 47990  
Olympia, WA 98504-7990

**RECEIVED**

**MAY 22 2006**

**WA STATE BOARD OF HEALTH**

Re: Draft of embalming or refrigerating of human remains

Mr. Therien,

Thank you listening to my concerns over the draft version of 246-500-030. Since my conversation was lengthy, I would like to outline my concerns with the current draft as it will adversely affect the funeral industry in the State of Washington.

I would like to take up discussion over 2e under 246-500-030. Your explanation that any family can ask to see their loved one, without embalming, during any 24 hour period prior to the body's final disposition troubles me. The following bullet points will explain my reasoning:

- Embalming is eliminated as a means of preservation for use during visitation since a family can ask to see a decedent during any 24 hour period prior to final disposition.
- If a family wants to view for more than 24 hours, embalming would be required. My funeral director's/embalmer's would need to remove from viewing container, undress, embalm, redress and re-casket the decedent. The family will most certainly take issue with this.
- If a family requests to see the deceased, and several days have passed, even though refrigerated, the body can still decompose, turn green, have pungent odors and purge body fluids.
- A decedent being viewed in a facility other than a funeral home would pose a problem of odor, public health and would make the contracted funeral home look unprofessional.
- Even with a "hold harmless" agreement signed by the family the funeral home can be sued for emotional distress. The cost of lawyers alone can put a funeral home in financial strain or will cause business insurance rates to increase dramatically.
- Viewing after several days without embalming will place employees at risk that must prepare the body (closing the mouth, setting features of the face, dressing, etc.) This situation could put a funeral home at risk of lawsuit from an employee.

The draft for 246-500-030 needs to be black and white, not gray. Your explanation of accepting religious tradition is noted, but according to our conversation, only a small group is taking issue. The law, whatever it ends up being, needs to protect the needs of the many and not the few. 24 hours from the time a funeral home brings a body into their care is ample time for most religions to conduct necessary ceremonies. After 24 hours, for the sake of public safety and family piece of mind, embalming must be performed if viewing of the body is requested.

Under the draft version of 246-500-030 line item 3, embalming would be allowed only under certain health circumstances. Many times the health care facility has not informed us of the decedent's condition and in some cases won't let us know the medical condition due to privacy concerns. I would ask that a complete list of conditions that warrant 2e void be sent to all funeral homes and health care facilities.

As an owner of funeral homes and cemeteries in the State of Washington, I must feel that my state will be behind me when trying to help the public. This draft version does not accomplish that.

Respectfully yours,

A handwritten signature in black ink, appearing to read "Glen C. Henrickson", with a large, stylized flourish at the end.

Glen C. "Chris" Henrickson  
President